



**OFFICE OF THE CHIEF JUSTICE**

**REPUBLIC OF SOUTH AFRICA**

**Case No: 03462/2015**

|     |                                  |           |
|-----|----------------------------------|-----------|
| (1) | REPORTABLE: YES                  |           |
| (2) | OF INTEREST TO OTHER JUDGES: YES |           |
| (3) | REVISED: NO                      |           |
| (4) | <b>9 SEPTEMBER 2016</b>          | .....     |
|     | DATE                             | SIGNATURE |

In the matter between:

**DEMOCRATIC ALLIANCE**

**Applicant**

**And**

**INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA**

**1<sup>st</sup> Respondent**

**CHAIRPERSON OF THE INDEPENDENT COMMUNICATIONS  
AUTHORITY OF SOUTH AFRICA N.O.**

**2<sup>nd</sup> Respondent**

**COMPLAINTS AND COMPLIANCE COMMITTEE OF THE INDEPENDENT  
COMMUNICATIONS AUTHORITY OF SOUTH AFRICA**

**3<sup>rd</sup> Respondent**

**CHAIRPERSON OF THE COMPLAINTS AND COMPLIANCE  
COMMITTEE OF THE INDEPENDENT COMMUNICATIONS  
AUTHORITY OF SOUTH AFRICA N.O.**

**4<sup>th</sup> Respondent**

**SOUTH AFRICAN BROADCASTING CORPORATION**

**5<sup>th</sup> Respondent**

**SOUTH AFRICAN POLICE SERVICES**

**6<sup>th</sup> Respondent**

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**JUDGMENT**

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**Coram RE Monama, J**

- [1] This is an application by the Democratic Alliance to review and set aside, the relevant respondents' decision which ordered it to excise a part of a political television advertisement aired during April 2014. The Applicant seeks the costs as well.
- [2] The Democratic Alliance is a registered political party and the official opposition in the Parliament of the Republic of South Africa.
- [3] There are six the respondents. Only four respondents are opposing the relief. The first respondent is Independent Communications Authority of South Africa ("The Independent Authority"). The second, the third and the fourth respondents are the internal structures or business units of the first respondent (they are referred herein collectively as "the Respondents").
- [4] The fourth respondent (the chairperson of the Complaints and Compliance Committee "the CCC") is opposing the relief sought but did not file the heads.
- [5] The South African Broadcasting Corporation ("the SABC") is the fifth respondent and is the only public broadcaster in the Republic . It is not opposing the application.
- [6] The sixth respondent is the South African Police Services (the SAPS"). This respondent is not opposing the application. It is however, the complainant who started these proceedings before the Respondents.

- [7] In 2014 the Republic went to the polls. During April 2014 the political campaigns from all and sundry were in full swing. The Democratic Alliance issued an advertisement to the South African Broadcasting Corporation to be broadcast on their various platform. The advertisement featured Mr Mmusi Maimane, then the premier candidate for Gauteng Province. The script read as follows:-

“So they say they took South Africa forward. Life today is better than it was 20 years ago. There have been some great leaders, leaders that have taken this country forward. You voted for them.

But since 2008, we have President Zuma’s ANC. An ANC that is corrupt. An ANC for the connected few. It’s an ANC that’s taking us backward. R200million is spent on upgrading the president’s private house. **We’ve seen a police force killing our people.** An ANC where 1.4 million more South Africans lost their jobs. Where are the jobs President?

iANC, Ayisafani [it’s not the same/ it has changed].

Together we can bring hope. Together we can allow an environment that creates jobs. Together, we can bring change for all South Africans.”

[The underlining supplied]

In the advertisement Mr Maimane is delivering a monologue, overlaid with video clips and pictures featuring the members of SAPS. The advertisement was flighted on three occasions during 8 and 9 April 2014.

- [8] On 10 April 2014 the Chief Executive Officer of the South African Broadcasting Corporation notified the applicant that the advertisement will be stopped. The notification reads as follows:-

“- It is our view that reference in your television advertisement to police killing our people is cause for incitement to action against police services<sup>1</sup>.....We are of the view that SABC will not permit personal attacks on any

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<sup>1</sup> See Para1 of Annexure FA3 on page 59 of the record.

party member or leader by any other party, as is being done in your advertisement in respect of President Jacob Zuma. We do not have any concern about generic statements regarding matters such as corruption or lack service of deliver<sup>2</sup> .....”

[The underlining supplied]

The applicant objected and the parties held some negotiations to resolve the dispute. A settlement was reached which allowed the broadcast subject to the deletion of any reference of personal attack particularly that of President Jacob Zuma. The formal hearing of the objection was postponed *sine die*. The broadcast was resumed during the evening of 16 April 2014.

- [9] On 17 April 2014 the South African Police Services lodged a complaint with SABC. They requested the advertisement to be stopped pending their formal complaint. Their request was rejected. On 20 April 2014 they lodged the complaint through their lawyers. They contended that:-

‘-Our client submit that the content of the advertisement, insofar as it relates to SAPS, is *likely* to promote unlawful, illegal or criminal acts as contemplated in Regulation 6(9)(b) and provoke violence as contemplated in Section 9(1)(a) of the Electrical Code.”<sup>3</sup>

and

“-Our client submits that the advertisements breaches the Regulations it likely to provoke violence against members of SAPS. Our client therefore request the CCC to make a finding that the advertisement breaches the Regulations and recommend that Icasa direct the SABC to stop broadcasting the advert.”<sup>4</sup>

[The underlining supplied]

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<sup>2</sup> See Para4 of Annexure FA3 on page 60 of the record.

<sup>3</sup> See Para3.3 of Annexure FA3 on page 69 of the record.

<sup>4</sup> See para1.4 of Annexure FA3 on page 68 of the record.

An urgent hearing was held on both 24 and 25 April 2014. During the hearing Independent Authority received the written and oral submissions. On 25 April 2016 issued an order without full reasons. It found that the advertisement breached the Regulations. On or during 18 August 2014 the applicant received the comprehensive judgment. In between these dates the general elections were held.

- [10] The issue to be determined is whether that portion of the advertisement which the police complained about was *likely* to provoke violence against them and in breach of the election regulations or codes. Lastly, whether the issues has become moot because the general elections has come and gone.

- [11] The legal framework is encapsulated in Regulations on Party Election Broadcasts, Political Advertisements, the Equitable Treatment of Political Parties by Broadcasting Licensees and Related Matters, 2014 (“the Code.”) The Code provides that:

“-A party that submits a political advertisement to a broadcasting service licensee for a broadcast must ensure that the advertisement does not:-

- (a) contravene the provisions of the Electoral Code, the Electoral Act, the Constitution, the Act (Electronic Communications Act 36 of 2003) and the Broadcasting Act; or
- (b) contain any material that is calculated, or that in the ordinary course is likely, to provoke or incite any unlawful, illegal or criminal act, or that may be perceived as condoning or leading support to any such act.”

The Code informed the political parties about the framework. It gave guidelines under which a political election broadcast and political party advertisements shall be conducted.

[12] As stated above the parties have raised and dealt with the question of mootness in their heads of arguments. There are two principles which govern the issue.<sup>5</sup> These are:-

- whether there is live or an existing dispute, and
- in the absence of live dispute, the next inquiry is whether the interests of justice demand that the matter be decide.<sup>6</sup>

In deciding this issue of the court must approach the issue broadly.<sup>7</sup> Before I deal with the issue it apposite to summarise the fundamentals or core duties and roles of the relevant parties. These are the roles of the Democratic Alliance (“the DA ”), Respondents, the South African Broadcasting Corporation and the South African Police Services.

[13] As stated above the Applicant is a registered political party. Its core business is to engage in political discourse in the Republic. The right is part of our democratic dispensation. The Independent Authority is established in terms of law.<sup>8</sup> Its areas of jurisdiction are extensive<sup>9</sup> and include the management of Broadcasting Act,<sup>10</sup> and the Electronic Communications Act.<sup>11</sup> It has extensive and critical areas of our lives to control. It was for these reasons that it has to be independent as the name correctly suggests. It has to be insulated from political or economic capture. It must perform its mandate without fear and favour. It must give its pronouncements irrespective of the parties involved or whether such pronouncements will be applauded or not. It is another institution which supports our democracy in the field of freedom of expression, political participation and censorship. It is a chapter nine institutions. The institution has control over the SABC which is the sole public broadcaster. The Independent Authority must therefore act fairly without fear and favour. It must be seen to have acted as such.

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<sup>5</sup> Director General Department of Home Affairs v Mukhamadiva 2014(3) BCLR 306 CC at Paragraph 33 – 37.

<sup>6</sup> National Coalition for Gay and Lesbian Equality v Minister of Home Affairs 2000(2) SA 1 CC at Paragraph 21.

<sup>7</sup> Independent Electoral Commission v Langenberg Municipality 2001(3) SA 925(CC).

<sup>8</sup> Act 13 of 2000 which came into operation on 11 May 2000.

<sup>9</sup> See Section 4 of Act 13 of 2000.

<sup>10</sup> Act 4 of 1999.

<sup>11</sup> Act 36 of 2005

- [14] The said Act regulates the public broadcaster, the South African Broadcasting Corporation. The SABC has huge and extensive powers. These powers must be exercised fairly. The objectives of the Broadcasting Act are to establish and develop broadcasting policy in the public interest and for the purpose of contributing to democracy, of safeguarding, enriching and strengthening political discourse. This monumental task is articulated as follows:-

“- In countries with high levels of illiteracy like South Africa, the role of broadcasting is all the more important in providing information so that people can participate in the process of development and nation-building. In relation to the development it ranges from the provision of human rights, housing, public health and agricultural guidance to literacy and formal education, economic and financial analysis. In nation-building, the role of broadcasting is to nurture a common sense of citizenship, reconciliation and tolerance while reflecting the rich cultural, language, religious and regional diversity of South African population. Broadcasting is one of the few opportunities for historically separated sectors of South African society to see and know each other and learn to navigate the differences.”<sup>12</sup>

Finally, the powers of the South African Police Services on the other hand, are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and to uphold and enforce the rule of law.

- [15] The alleged offending portion has been stated already in paragraphs 8 and 9 above. This application raises several complex legal issues, human rights, censorship, democratic principles and political or public policy considerations. It raises the right of freedom of expression, the political discourse rights, censorship and the issue of mootness. It is therefore proper to have reflected on the roles of the different parties particularly the SABC, the SAPS , the Independent Authority and the Democratic Alliance.

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<sup>12</sup> Report on the protection and viability of public broadcasting services: cross media control of broadcasting services and local television content and South Africa music- Independent Broadcasting Authority (1995) at 40.

[16] The various courts in this country have developed jurisprudence as to how to interpret the *rights* provisions contained in the Constitution which may be broadcasted over the SABC platforms. The test to interpret the political broadcast materials is settled. The case law and the pronouncements of the Supreme Court of Appeal, and the Constitutional Court were placed before the tribunal. These courts have laid down the guidelines. First, it is now trite the statutes dealing with these rights must be interpreted purposively and consistently with the provisions of the Constitution.<sup>13</sup> This supreme law guarantees every citizen those rights. Thus where two or more compatible interpretations are available the interpretation that advances the spirit of the Bill of *rights provisions* should be adopted.<sup>14</sup> Where necessary, the courts are obliged to consider the provisions of international law.<sup>15</sup> The test is not to rely on speculation and conjecture but substantial evidence about the real danger.<sup>16</sup>

[17] The court now turns to the evaluation of the evidence as contained in the affidavits and annexure thereto. The court is required to take the entire conspectus<sup>17</sup> of all evidence presented into account. It is incorrect to cherry-pick one obvious aspect of evidence and latch on it without putting it in a proper context of entire evidence.

[18] The Applicant contends that the decision of Respondent is flawed and stands to be reviewed and set aside. It relies on both the legal and factual errors. In respect of material legal errors it is contended that:-

- it is wrong that during election time the freedom of expression must be restrained;
- it used wrong standard of proof; and
- it failed to adopt a more contextual and reasonable interpretation.

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<sup>13</sup> Cool Ideas 1186 CC v Hubbard and Another 2014(4) SA 474 (CC) at para 28.

<sup>14</sup> Wary Holdings (Pty) Ltd v Stalwo (Pty) Ltd and Another 2009(1) SA 337 (CC) at 356 C - F 46 and Investigative Directorate: Serious Economic Offences and Others v Hyundai Motor Distributors (Pty) Ltd And Others 2001 (1) SA 545 (CC) at paras 21-26

<sup>15</sup> Sections 39 and 233 of the Constitution in interpreting the bill of rights provision and legislation respectively.

<sup>16</sup> Midi Television t/a ETV v Director of Public Prosecutions 2007(5)SA 540 SCA at 548 A-D.

<sup>17</sup> See S v Trainor 2003(1) SACR 35 SCA 35 at 41 A-C

The alleged material factual errors relate to the use of irrelevant facts. The Applicant contends further that there was no factual evidence placed before the Respondents to support their allegations that the advertisement was *likely* provoke violence as alleged.

[19] The Respondents' submissions is that they were justified because the advertisement objectively viewed, in its context, encouraged the public to view the police as enemies. They also rely on Section 205 of the Constitution as well as Section 49 of Act 51 of 1977.<sup>18</sup>

[20] Section 205 of the Constitution deals with the police issues. It provides that:-

- “ – (1) The national police service must be structured to function in the national, provincial and, where appropriate, local spheres of government.
- (2) National legislation must establish the powers and functions of the police service and must enable the the police service to discharge its responsibilities effectively, taking into account the requirements of the provinces.
- (3) The objects of the police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law.”

The above section has no bearing on the issue and it is considered to be irrelevant. Section 49 of Act 51 of 1997 deals with use of force to effect or in effecting arrest. The section provides *inter alia* that :-

“(2) if any arrestor attempts to arrest a suspect and the suspect resists the attempt, or flees, or resists the attempt and flees, when it is clear that an attempt to arrest him or her is being made, and the suspect cannot be arrested without the use of force, the arrestor may, in order to effect the arrest, use such force as may be reasonably necessary and proportional in the circumstances to overcome the resistance or to prevent the suspect from fleeing, but, in addition to the requirement that the force

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<sup>18</sup> The Criminal Procedure Act.

must be reasonably necessary and proportional in the circumstances, the arrestor may use deadly force only if-

- (a) the suspect poses a threat of serious violence to the arrestor or any other person; or
- (b) the suspect is suspected on reasonable grounds of having committed a crime involving the infliction or threatened infliction of serious bodily harm and there are no other reasonable means of affecting the arrest, whether at that time or later.”

The respondents concluded its submissions that their decision was justified.

- [21] These two submissions are devoid of any merits and dangerous at best. There is nothing in this advertisement that can remotely be construed as an invitation to obstruct the police in the execution of their work. The respondent must be reminded that there is a rule of law in this country. This Coution is directed to the South African Police Services.
- [22] It is common cause that the events regarding the assault on the police happened prior to the broadcast. The police activities<sup>19</sup> in Bekkersdal during October 2013, in Marikana , in Free State and Daveyton occurred well before the advertisement . There were outcry about the police conduct and alleged brutality. However, no violence occurred against them. Their argument Became just a speculation and baseless. Therefore, the Respondents’ decision is wrong and illogical. What is shocking is that the committee misdirected itself notwithstanding the wealth of jurisprudence presented in this regard and more so they disregard cogent argument. The broadcast was aimed at the political adversary, the African National Congress. The applicant wanted to inform the public about the two African Congress. One before 1998 and one thereafter. The latter is allegedly for the few and politically well connected
- [23] Sections 16 and 19 of the Constitution deal with the freedom of expression

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<sup>19</sup> See all the areas mentioned by the respondent on pages 70 – 71 of the record.

and political rights. These rights are at the cornerstone of our democracy.

Section 16(1) of the Constitution provides that:

“-Everyone has the right to freedom of expression, which includes:-  
(a) freedom to receive and impart information or ideas.”

Section 19 of the Constitution provides and protects political rights. In Section 19(1) there is a right to campaign for a political party and course while Section 19(2) provides for free and fair elections. There is a close connection between freedom of expression, political rights and the maintenance of democracy.<sup>20</sup> The conduct of SAPS and the Respondents deprived the people of the Republic to hear the Applicant.

[24] As stated above, there is a plethora of judgment are several judgments which emphasise the crucial role of the freedom of expression and the right to campaign freely.<sup>21</sup> They held that these rights must be curtailed only in extreme situation where the language justify it and backed by real evidence. The Independent Authority is expected to guard these rights jealously. The respondents have failed the country. They went out of their ways to find in favour of the executive. The third respondent emphasized the limitation clause in the Constitution to find for the SAPS. They do no deal with the importance of the freedom of speech. The fact that there must be free political discourse. The silence is a course of concern. I am not aware whether the members of the third respondent take an oath before the adjudicate issue. The Act is silent on this issue of oath<sup>22</sup>. The matters they were called to decide upon are curial. Unless their impartiality is guaranteed by oaths their decisions will always be suspects. This committee issues order which must be obeyed. The Respondent used wrong test in that they held the test as follows:

“-In our view the test is as spelt out in the above regulation which require CCC to consider whether the material of the portion of the advert that relates to police is likely to provoke or incite any unlawful, or illegal of criminal act, or that it may be perceived as condoning or lending support to such act. The election period tends to bring a lot of volatility and therefore the language that is used during the period

<sup>20</sup> Democratic Alliance v African National Congress 2015(2)SA 233 CC.

<sup>21</sup> Kham v Electoral Commission of South Africa (2015) ZACC 37 of 30 November 2015.

<sup>22</sup> See section 4 of Act 13 of 2000.

should be guarded and be conducive to an environment that is peaceful, lawful and free for the political parties and public to exercise their rights. The police should not be seen as a threat to the community as suggested by the advert.”<sup>23</sup>

[the underlining provided]

There was no legal and sound grounds to curtail such a vital right. As stated above that right is fundamental. The Respondents twisted concessions which the applicant made. The reference to a concession by the Applicant is taken out of context. The Applicant conceded and correctly so in my view that the members of the police services work under difficult conditions.<sup>24</sup> The Respondents used such concession to curtail the applicant’s freedom of speech and right to campaign freely, such attitude is unacceptable. The Respondents failed to act fearlessly to protect the fundamental political right.

[25] The Applicant’s contention is that the Respondent used speculation and conjecture in their interpretation of the statement that is:-

“-likely to provoke violence against the members of the SAPS.”<sup>25</sup>

They used restrictive interpretation. This is wrong approach which went against the precedent, and they suppressed the applicant’s freedom of expression and political discourse. The court finds the conduct of the SAPS in the lodging of the complaint strange. They invited themselves whereas the people target was the African National Congress. Their decision not to get involved in the review process is surprising and likely to fuel speculation. It must be remembered that a portion of the advert that mentioned the President was postponed *sine die*. The last point of material error of law is the failure by the respondent to contextualise and adopt a reasonable interpretation. The proper approach in the interpretation of Regulation 6(9)(b) of the Code is contextual and objective. The court has already cautioned against selective approach. The selective approach is frowned upon by the recent decision where it was held that:-

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<sup>23</sup> See Paragraphs 4 and 5 of the record on page 179.

<sup>24</sup> Paragraph 47 on page 208 of the record.

<sup>25</sup> See pages 68 -69 of the record.

“-It is important to look, as an ordinary reader would, at the statements complained of in the context of the extracts as a whole. The respondents relied on certain parts of the extract and attempt to show that these particular parts excised from the extract and standing alone were defamatory. This end of selective approach is not acceptable.”<sup>26</sup>

The prohibition is understandable because the meaning must obtain from the entire text.

- [26] The court has already alluded to the benefit of regard to international in the interpretation of the bill of rights provisions. The above approach finds support in the decisions of the European Court of Human Rights where it was held:

“- In the court’s view, a legal system which applies restrictions on human rights in order to satisfy the dictates of public feeling [South African Police Services] – real or imaginary – cannot be regarded as meeting the social needs recognised in a democratic society, since the society must remain reasonable in its judgment. To hold otherwise would mean that freedom of speech and opinion is subjected to heckler’s veto,”<sup>27</sup>

The police abused their powerful position with little or no regards, to the democratic right of the Democratic Party. This abuse has had severe adverse consequences. They abuse the financial resource of the Republic. They were abetted and supported by the Respondents who disregarded the most powerful submissions and the precedent. Their bona fide are questionable. It is the same Respondents who delayed in their judgment and now allege mootness. The Respondent ought to act fairly and fearlessly. Our democracy depends on their neutrality.

- [27] The court has already stated that the relevant case law was placed before the tribunal. The tribunal in its wisdom chose to ignore the pronouncements including those of the highest court in land. The function of the Constitutional Court is to guide and direct jurisprudence

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<sup>26</sup> Council for Medical Scheme and Another v Selfmed Medical Scheme and Another (2011)ZASCA 207 (25 November 2011).

<sup>27</sup> Vajnai v Hungary App. No. 33629/06 (EctHR 8, July 2008) at paragraph 57. See also paragraph 53 of same citation and Fratanolo v Hungary App No. 29459/10 (EctHR 3 November 2011).

particularly insofar as it affects human and allied rights. It recently held in *Kham v Electoral Commission of South Africa* that:

“-The constitutional requirement is that elections must be free and fair... The expression highlights both the freedom to participate in the electoral process and the ability of the political parties and candidates, bot aligned and noon-aligned, to compete with one another on relatively equal terms, so far as that can be achieved by the IEC. As to the former, from the perspective of a political party or an individual candidate seeking election in a municipal party or an individual candidate seeking election in a municipal ward, it demands the freedom of canvass: to advertise: and to engage in the activities normal for a person seeking election,”<sup>28</sup>

This judgment is binding on all the courts of the land. It is a precedent and guideline. It cannot be ignored. The word “*likely*” has been held to be more than speculation and that interpretation is binding . The Respondents have totally misunderstood and misapplied the legal frame work governing the interpretation of freedom of speech in terms of Regulation 6(9)(b). Their interpretation is illogical and unfair. Their interpretation favoured the South African Police Services unfairly. I found no plausible explanation as to why the SAPS who are the complaints failed to assist the court by giving their heads of arguments. The only inferences to be drawn from their entire conduct were to advantage a political party and to resist the political discourse. Their argument that the applicant drew them into the political “skirmishes” is disingenuous. They invited themselves into the arena. They cannot be blamed alone. The Independent Authority should have considered the evidence fairly and they failed to do so.

- [28] Both parties have dealt with the mootness in their heads of argument. The Applicant conceded that the issue is moot but submitted the issue is important and it must be decided. The respondent did not make any oral

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<sup>28</sup> [2015] ZACC 37 (30 November 2015).

submission on the issue. However, it dealt with the issue in their heads of argument.

[29] The issue can be disposed of promptly. In assessing the issue, regard must be had to the entire issue and conduct of the respondents. Notwithstanding, their eagerness to deal with the matter as urgent it took them almost three months to deliver the reasons for their decision. Such delay is unacceptable because it prejudiced the applicants. The issue was important to the applicant and to their political rights. They created the alleged mootness. It will be incorrect to punish the applicant. Justice must be done and also seen to be done. The issue of the two African National Congress raised in the broadcast of 2014 was recently repeated during the recent municipal elections.

[30] The conduct of the respondents deserves to be sanctioned. The only sanction this court can impose is in the form of costs

[31] In the circumstances the Complaints and Complaints Committee decision is found to be irrational, unreasonable. The Committee and its chairman relied on irrelevant consideration. It applied wrong standard. In essence it censored the advertisement and by the same token infringed the applicant's freedom of expression and curtailed illegally its political rights. Accordingly I make the following order:

1. The decision of the Complaints and Compliance of 25 April 2014 declaring the advertisement of the Applicant to be in breach of the Regulation and or Code is hereby reviewed and set aside.
2. The First, the Second, the Third and Fourth Respondents are ordered to pay the costs of this application including the costs incurred during the hearing before the CCC jointly and severally, the one paying the others to be absolved.

3 The costs referred in order 2 above shall include the costs of two counsel.

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**RE MONAMA**  
**JUDGE OF THE HIGH COURT**  
**GAUTENG LOCAL DIVISION**

**Appearances.**

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|-----------------------|-----------------------------------------------------------------------------------------------------------------|
| For the Applicant:    | Adv S Budlender, and<br>Adv N Ferreira.                                                                         |
| Instructed by:        | Minde Shapiro Smith Inc<br>Bellville, Cape Town, and<br>Christodoulou and Mavrikis Inc<br>Illovo, Johannesburg. |
| For the Respondents : | Adv. CM Erasmus SC, and<br>Adv. M Naidoo.                                                                       |
| Instructed by:        | Makhubela Attorneys,<br>Brooklyn, Pretoria, and<br>Selebogo Inc, Johannesburg.                                  |
| Date of hearing:      | 1 August, 2016.                                                                                                 |
| Date of judgment:     | 9 September 2016.                                                                                               |